THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.11551 OF 2005

DISPOSED OF ON 06-10-2005.

BETWEEN:

M/S PRAKASH TRANSPORT, BELLAMPALLI,

ADILABAD …….. PETITIONER

AND

THE SINGARENI COLLIERIES COMPANY LTD

HYDERABAD. AND OTHER …….. RESPONDENTS

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WRIT PETITION NO.11551 OF 2005

O R D E R :

1. The petitioner challenges tender notice published in Deccan Chronicle dated 11.5.2005 so far as it relates to item no.1 i.e.MMR/PD/E-31/2005, DATED 5.5.2005 for transportation of coal from RK.1A incline to SRP/RKP/SK CSPs.

2. The petitioner is a partnership firm and it is represented by its partner D.Brahma Rao. The partnership firm deals in transport business. The petitioner firm was awarded contract for transportation of coal from RK.1A incline to CSP/RKP vide firm order No.AMM-293 dated 18.1.2005. An agreement bond came to be executed by the General Manager, Singareni Collieries Company Limited, Mandamarri Area, Adilabad District-2nd respondent on 30.1.2005. The 1st respondent had awarded the contract in favour of the petitioner firm for transportation of coal from RK.1A incline to CSP/RKP for a period of two years i.e. from 20.1.2005 to 19.1.2007. Clauses 7 and 27 of the Firm Order as well as clauses 8 and 27 of the agreement bond state that if there is any variation in lead distances between linkages, the payments will be made proportionate to the rate agreed for that linkage. 2nd respondent addressed a letter dated 15.3.2005 to the petitioner firm calling upon its representative to attend for negotiations on 17.3.2005 in the office of 2nd respondent due to change of linkage. Negotiations were held on 17.3.2005 and 31.3.2005. In response to the letter dated 21.3.2005 issued by the General Manager with regard to consent for transportation of coal in respect of linkage from RK-1A incline to SRP-CSP, the petitioner firm has submitted consent letter on 28.3.2005. The petitioner firm had also reduced the rate for transportation on coal from Rs.2.74 paise per tonne per kilometer to Rs.2.56 paise per tonne per kilometer. This exercise was done taking into consideration clauses 7 and 27 of the Firm Order No.AMM-293 dated 18.1.2005 as well as clauses 8 and 27 of the agreement bond dt.30.1.2005. The 2nd respondent had issued proceedings vide Ref.No.MMR/PD/AMM-293/04-05/273, dated 29.4.2005 awarding supplementary contract to the petitioner firm for transportation of coal from RK 1A incline to SRP-CSP for a period of three months i.e. 1.4.2005 to 30.6.2005 at the rate of Rs.2.56 paise per tonne per kilometer subject to other terms and conditions mentioned in the Firm Order dated 18.1.2005. The

original contract awarded to the petitioner firm is valid for two years i.e. from 20.1.2005 to 19.1.2007. As per the terms and conditions of the Firm Order dated 18.1.2005 and the agreement bond dated 30.1.2005, the respondents have to provide 1000 Metric tones which has to be transported to unloading point. Pursuant to the original contract, the petitioner firm transported coal to the destination without any adverse remarks. While so, 2nd respondent issued tender notice by including both the unloading points(original as well as supplementary). The petitioner firm is mainly aggrieved for inclusion of transportation of coal from RK 1A Incline to RKP-CSP in the tender notification. The petitioner firm is also aggrieved for inclusion of transportation of coal from RK 1A incline to SRP CSP as it is holding valid contract for a period of 3 months. 2nd respondent invited tenders without any notice to the petitioner firm and without valid reasons including the transportation works, which were already awarded to the petitioner firm. Since 2nd respondent had issued fresh tender notice including both the contract works which were already awarded to the petitioner firm, the petitioner approached this court by invoking the jurisdiction under Article 226 of the Constitution of India.

3. The petitioner filed WPMP.No.14779 of 2005. An interim order came to be passed on 24.5.2005 and it reads as follows:

> " The respondents are directed not to proceed with the tender notice in respect of the works which were allotted to the petitioner pursuant to the orders awarded to the petitioner firm for transportation of coal from RK.1a incline to RKP-CSP/RKP vide firm order No.AMM-293, dated 18.1.2005 which is valid upto 19.1.2007. This order will not preclude the respondents to appoint some more contractors in addition to the petitioner."

4. The respondents entered appearance and filed WVMP.No.1856 of 2005 with a prayer to vacate the interim order dated 24.5.2005. When the vacate stay petition came up for hearing, both the counsel consented for disposal of the main writ petition itself. Accordingly, this writ petition is heard finally and it is being disposed of by this order.

5. The sum and substance of the counter affidavit filed by the respondents is :

The award of contract to the petitioner firm for the distance covered from RK-1A incline to CSP/RKP is not in dispute. The distance between the loading point and unloading point is 3.762 KM. The rate of contract was Rs.2.74 paise per KM. Subsequently the linkage has been changed from RK-1A incline to CSP-SRP and the new distance is 10.415 Kms. The petitioner firm agreed to reduce the rate from Rs.2.70 paise per tonne per KM to Rs.2.56 paise because of change in distance of linkages. As a result of formation of new route for transportation of coal from RK-1A incline to CSP-SRP the petitioner was permitted to transport coal in the new linkages for a period of 3 months commencing from 1.4.2005 to 30.6.2005. Since new linkage has been formed (RK-1A incline to CSP-SRP) a fresh tender notice dated 11.5.2005 was issued by the respondents inviting bids for transportation of coal from RK-1A incline to CSP-SRP/RKP/SK. As there was change in linkage, the respondents were constrained to issue tender notice dated 11.5.2005 for transportation of coal. The petitioner firm was called for negotiations on 17.3.2005 in the office of 2nd respondent. The petitioner had attended the negotiations and expressed his acceptance to reduce the rate from Rs.2.74 paise to Rs.2.56 paise per tonne per KM. The respondent in order to avoid disruption of coal transportation has awarded the work to the petitioner firm for a period of three months subject to the terms and conditions of the earlier order dated 19.1.2005. Once the period of three months has been expired, the petitioner firm has no right to insist the respondent authorities to extend the period of contract.

6. The petitioner filed reply affidavit and thereupon the respondents filed counter affidavit. The stand of the parties in their additional pleadings is as that of in their original pleadings. It is suffice to refer para 7 of the reply affidavit filed by the petitioner and it is thus:

> " 7. In reply to the averments mentioned in para No.9 of the counter affidavit I submit that a reading of the Clauses 7 and 27 of the Firm order and clauses 7 and 26 of the Agreement bond would make it clear that the petitioner firm is entitled for awarding contract even if there is any change in the distance by paying proportionate rate as agreed upon by the respondent company in the original contract."

7. Heard learned counsel for both the parties.

8. Learned counsel appearing for the petitioner firm contends that the works for which the tender notice has been issued and published in Deccan Chronicle dated 11.5.2005 includes the works already allotted to the petitioner under the agreement bond dated 30.1.2005 and the Firm Order dated 18.1.2005 and, therefore, the tender notice impugned in the writ petition is liable to be set aside. He also submits that the respondents being instrumentalities of the State are required to be fair and reasonable even in the matter of awarding contract. A further submission has been made that the respondents- authorities cannot invite tenders in respect of the work which was already entrusted to the petitioner in pursuance of the Firm Order dated 18.1.2005 and the Agreement Bond dated 30.1.2005.

9. Learned Standing Counsel appearing for the respondents submits that whenever there is change of linkage, a fresh tender notice is required to be issued. He further submits that as the linkage has been changed, there is increase in distance and as such the rate also comes down and as a result a new contract for transportation of coal forms. He further submits that the dispute in the instant writ petition arises out of the concluded commercial contract between the petitioner and respondents and therefore the writ petition does not lie. In support of his submissions, he placed reliance on a decision of this court in VIJAY FIRE PROTECTION SYSTEMS LTD. V. VISAKHAPATNAM PORT TRUST and the decision of Supreme Court in STATE OF BIHAR V. JAIN PLASTICS AND CHEMICALS LIMITED. In the first cited decision, this court held that Visakhapatnam Port Trust may be an authority for the purpose of Articles 12 and 226 of the Constitution of India; but, it is not as if, its every action is amenable to be corrected in a judicial review proceedings by this Court. In the second cited decision, the Supreme Court held that it is settled law when an alternative and efficacious remedy is open to the litigant it should be required to pursue the remedy first and not to invoke the writ jurisdiction of the High Court. Equally, the existence of alternative remedy does not effect the jurisdiction of the court to issue writ. But, ordinarily that would be a good ground in refusing to exercise the discretion under Article 226.

10. The dispute in the instant writ petition arises out of the concluded commercial

contract between the petitioner and the respondent. The terms and conditions of the contract and the work order are not traceable to any statute or statutory instrument and the dispute arises in the realm of pure private law.

11. The law on the subject is succinctly summarized by the Apex Court in STATE OF U.P. v. BRIDGE & ROOF CO. (INDIA) LTD. and it reads as under:

> " **(15)** IN our opinion, the very remedy adopted by the respondent is misconceived. It is not entitled to any relief in these proceedings, i.e. in the writ petition filed by it. The High Court appears to be right in not pronouncing upon any of the several contentions raised in the writ petition by both the parties and in merely reiterating the effect of the order of the Deputy Commissioner made under the proviso to Section 8-D (1).
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> **(16)** FIRSTLY, the contract between the parties is a contract in the realm of private law. It is not a statutory contract. It is governed by the provisions of the Contract Act or, may be, also by certain provisions of the Sale of Goods Act. Any dispute relating to interpretation of the terms and conditions of such a Contract cannot be agitated, and could not have been agitated, in a writ petition. That is a matter either for arbitration as provided by the contract or for Civil Court, as the case may be. Whether any amount is due to the respondent from the appellant-Government under the contract and, if so, how much and the further question whether retention or refusal to pay any amount by the Government is justified, or not , are all matters which cannot be agitated in or adjudicated upon in a writ petition. The prayer in the writ petition, viz., to restrain the Government from deducting particular amount from the writ petitioners' bill(s) was not a prayer which could be granted by the High Court under Article 226. Indeed, the High Court has not granted the said prayer.
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> **(17)** SECONDLY, whether there has been a reduction in the statutory liability on account of a change in law within the meaning of sub-clause (4) of Clause 70 of the Contract is again not a matter to be agitated in the writ petition. That is again a matter relating to interpretation of a term of the contract and should be agitated before the arbitrator or the Civil Court, as the case may be. If any amount is wrongly withheld by the Government, the remedy of the respondent is to raise a dispute as provided by the contract or to approach the Civil Court, as the case may be, according to law. Similarly if the government says that any over-payment has been made to the respondent, its remedy also is the same.
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> **(18)** ACCORDINGLY, it must be held that the writ petition filed by the respondent for the issuance of a writ of Mandamus restraining the Government from deducting or withholding a particular sum, which according to the respondent is payable to it under the contract, was wholly misconceived and was not maintainable in law. The writ

petition ought to have been dismissed on this ground along."

It is the contention of the learned counsel for the petitioner that the notification impugned in the writ petition covers the route which was the subject matter of the earlier contract which is in force and therefore the impugned notification is required to be set aside so far as it covers the route from RK-1A Incline to CSP/RKP.

12. The core issue in this case is whether the route for which tenders are invalid is only variation in lead distance between the linkages or totally a new contract. Learned counsel appearing for the petitioners by making copious references to the Firm order and the Agreement Bond submits that the route notified in the impugned notification is only because of variation in lead distances between the linkages and therefore the contract is to be awarded to existing contractor as per clauses 7 and 27 of the Firm Order and clauses 8 and 27 of the Agreement Bond. The said clauses read as under:

" Clause 7 of Firm Order:

During the operation of the contract in case there is variation in lead distances between linkages the payment will be made proportionate to the rate agreed for that linkage.

Clause 27 of Firm Order:

However, for any reason during the period of contract if coal to be transported to any linkage other than the main linkage, it shall be at the applicable rate for the slab distance within which actual distance from the Mine to such secondary linkage falls.

Clause 8 of Agreement Bond:

During the operation of the contract, in case there is variation in lead distances between linkages the payment will be made proportionately to the rate agreed for that linkage.

Clause 27 of the Agreement Bond:

However, for any reason during the period of contract if coal to be transported to any linkage other than the main linkage, it shall be at the proportionate rate for the distance within which actual distance from the Mine to such secondary linkage fails."

A plain reading of the above clauses indicates that in case of variations in lead distance between linkages, the payment will be made proportionate at the rate agreed for that linkage. The route which is the subject matter of earlier contract which is in force is RK-1A Incline to CSP/RKP. The distance between RK 1A Incline to CSP/RKP is 3.762 KM. The route for which tenders are invited in the notification impugned in the writ petition is RK 1A Incline to CSP/SRP. In other words, the route is between RK 1A incline to coal screening plant at Srirampur. The distance between RK 1A incline to CSP/SRP is 10.415 KM. The respondents placed on record a map to show that route for which the contract between the petitioner and respondent is in force and the route, which is notified, are different. A maiden look at the map placed on record clearly indicates that the route notified in the impugned writ petition is altogether a new route and does not effect the linkage from RK 1A Incline to CSP/RKP. Therefore, the contention of the learned counsel for the petitioner that the route notified in the notification impugned in the writ petition is only change of linkage between RK 1A Incline to CSP/RKP has no merit. In that view of the matter the petitioner cannot have any objection for notifying the route for transportation of coal from RK 1A to CSP-SRP (coal screening plant, Srirampuram).

13. A contention has been advanced by learned counsel appearing for the petitioner that the respondents have awarded the contract for transportation of coal from RK 1A to CSP-SRP for a period of three months commencing from 1.4.2005 to 30.6.2005 at the rate agreed by the petitioner i.e. Rs.2.56 paise per tonne per KM and therefore the contract should have been continued with co-terminus with the earlier contract in respect of transportation of coal from RK 1A Incline to SRP-CSP. Admittedly, the period for which the petitioner has been permitted to transport coal to the new linkage i.e. RK 1A incline to CSP/Srirampur has been expired. The petitioner has no legal right, which he can seek for enforcement by invoking jurisdiction of this Court under Article 226 of the Constitution of India.

14. Before parting with the case it is to be clarified that the earlier contract between

the petitioner and the respondent for transportation of coal is from RK 1A Incline to CSP, Ramakrishnapuram. The respondents-authorities shall ensure the said route to the petitioner firm during the subsistence of the original contract and the same shall not be disturbed because of formation of new linkage from RK 1A Incline to CSP, Srirampuram.

14. In the result, I find that the writ petition is devoid of merits and the same is hereby dismissed, but in the circumstances of the case without costs.

Dated: 06-10-2005. (B.SESHASAYANA REDDY,J)

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